

ITEM 12
PROPOSED ORDER TO SET ASIDE
PARAMETERS AND GUIDELINES

Notification of Involuntary Liens
04-PGA-15 (SB 90-3891)

Statutes 1980, Chapter 1281

Amended By

Statutes 2004, Chapter 227 (Sen. Bill No. 1102, § 54, eff. Aug. 16, 2004)
Statutes 2004, Chapter 889 (Assem. Bill No. 2853, § 2, eff. Sept. 29, 2004)

EXECUTIVE SUMMARY

Background

In 1981, the Board of Control, the predecessor to the Commission, determined that counties incurred costs mandated by the state because of the requirement to notify judgment debtors of involuntary liens in those cases where the lienor is a governmental entity. The test claim statute gave counties fee authority to recover notification costs from non-governmental entities.

Statutes 2004, chapter 227, amended Government Code section 27297.5 and made this an optional program. The amendment substituted “may” for “shall” in subdivision (a); substituted “authorized” for “required” in subdivision (f); and added new subdivision (h), as follows:

In recognition of the state and local interests served by the action made optional in subdivision (a), the Legislature encourages local agencies to continue taking the action formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a *local agency* that does not continue to take the formerly mandated action.

This amendment was effective on August 16, 2004.

Statutes 2004, chapter 889, amended Government Code section 27297.5, subdivision (h), by replacing the phrase “local agency” in the second sentence, with “county recorder.” This amendment was effective on September 29, 2004.

On November 8, 2004, the State Controller requested amendment of the parameters and guidelines because this has been made an optional program.¹

Discussion

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that

¹ See Exhibit A.

require expenditure by local governments of their tax revenues.² To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

As amended, Government Code section 27297.5, subdivision (a) now states that the county recorder *may* . . . notify the person or persons or attorney of record by mail of the recordation.

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.³ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁴

Since the notification activity included in the parameters and guidelines for this program is not required by the plain meaning of the statute, it is not subject to reimbursement under section 6, article XIII B of the Constitution and Government Code section 17514.

Therefore, staff concludes that the parameters and guidelines for this program should be set aside.

Staff Recommendation

Staff recommends that the Commission adopt the attached order setting aside the parameters and guidelines for the *Notification of Involuntary Liens* program, effective August 16, 2004.

² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

³ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Statutes 1980, Chapter 1281

Filed June 12, 1981 with the Board of Control,

By the County of San Bernardino, Claimant

Amended by Statutes 2004, Chapter 227,
Section 54 (Sen. Bill No. 1102, eff. Aug. 16,
2004), and Statutes 2004, Chapter 889, Section
2 (Assem. Bill No. 2853, eff. Sept. 29, 2004).

No. 04-PGA-15 (SB90-3891)

Notification of Involuntary Liens

**ORDER TO SET ASIDE PARAMETERS
AND GUIDELINES**

(Proposed on September 27, 2005)

ORDER TO SET ASIDE PARAMETERS AND GUIDELINES

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On November 8, 2004, the State Controller requested amendment of the parameters and guidelines because this has been made an optional program.⁵

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that

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require expenditure by local governments of their tax revenues.⁶ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

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As amended, Government Code section 27297.5, subdivision (a) now states that the county recorder *may* . . . notify the person or persons or attorney of record by mail of the recordation.

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.⁷ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁸

Since the notification activity included in the parameters and guidelines for this program is not required by the plain meaning of the statute, it is not subject to reimbursement under section 6, article XIII B of the Constitution and Government Code section 17514.

Therefore, the Commission sets aside the parameters and guidelines for the *Notification of Involuntary Liens* program, effective August 16, 2004.

Paula Higashi, Executive Director

Date

⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

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